

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

PRENTISS JOHNSON,

Plaintiff,

v.

Case No. 05-CV-1231

DEPARTMENT OF VETERANS AFFAIRS,
ERIC SCHNEIDER, THOMAS FRANKE,
and CLIFFORD STARKS,

Defendants.

ORDER

Pro se plaintiff Prentiss Johnson filed suit on November 28, 2005, alleging discrimination and harassment. By order dated December 19, 2005, the court denied Johnson's motion to proceed in forma pauperis and directed Johnson to file an amended complaint describing the basis of the alleged discrimination. On January 5, 2006, Johnson paid the filing fee and filed a right-to-sue letter from the EEOC. On January 6, 2006, Johnson filed an amended complaint describing the basis of the alleged discrimination. It appears that as of the date of this order, the defendants have not been served with a summons and complaint.

Federal Rule of Civil Procedure 4(m) states:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

Given that the amended complaint did not name any new defendants,¹ the period to serve the summons and complaint on the defendants expired on March 28, 2006, 120 days after Johnson filed his first complaint. Accordingly, the plaintiff shall have twenty (20) days from the date of this order to provide good cause for the failure to serve the defendants with a summons and complaint. If the plaintiff does not provide good cause for the failure of timely service within twenty (20) days from the date of this order, the court will dismiss the complaint without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

SO ORDERED.

Dated at Milwaukee, Wisconsin, this 21st day of April, 2006.

BY THE COURT:

s/J.P. Stadtmueller
J.P. STADTMUELLER
U.S. District Judge

¹ See Wright & Miller, 4B Federal Practice & Procedure: Civil 3d § 1137, 377 (2002). (When an amended complaint is filed naming a new defendant for the first time, a new 120-day period for service of process begins to run for service upon the added defendant.)